

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Court of Appeals Briefs

---

1989

# Roland Webb v. R.O.A. General, Inc., a Utah corporation, William Reagan, individually, and William Adams, Esq., individually and Douglas T. Hall, Esq., individually : Reply Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Philip R. Fishler; Stephen J. Trayner; Strong and Hanni; Douglas T. Tall; Attorney for Defendant. Val J. Christensen; Victoria E. Brieant; LeBouef, Lamb, Leiby and McRae; Attorneys for Respondent.

---

### Recommended Citation

Reply Brief, *Webb v. ROA General*, No. 890170 (Utah Court of Appeals, 1989).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/1702](https://digitalcommons.law.byu.edu/byu_ca1/1702)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

DOCKET NO.

890170-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

ROLAND WEBB,

Plaintiff-Respondent,

VS.

R.O.A. GENERAL, INC., a Utah corporation, WILLIAM REAGAN, individually, and WILLIAM ADAMS, ESQ., individually, and DOUGLAS T. HALL, ESQ., individually,

Defendants-Appellants

No. 890170-CA

Category 14(b)

APPELLANTS' REPLY BRIEF

On Appeal From the Judgment of the  
Third Judicial District District for  
Salt Lake County, State of Utah

Honorable James S. Sawaya, Judge

PHILIP R. FISHLER  
STEPHEN J. TRAYNER  
STRONG & HANNI  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
(801) 532-7080  
Attorneys for Defendant-  
Appellant Reagan

DOUGLAS T. HALL  
1775 North 900 West  
Salt Lake City, Utah 84116  
(801) 521-1775  
Attorney for Defendant-  
Appellant R.O.A.

VAL J. CHRISTENSEN  
VICTORIA E. BRIEANT  
LEBOEUF, LAMB, LEIBY & MACRAE  
136 South Main Street, Suite 1000  
Salt Lake City, Utah 84101  
(801) 355-6900  
Attorneys for Plaintiff-Respondent

IN THE COURT OF APPEALS OF THE STATE OF UTAH

---

ROLAND WEBB,	)	
	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	
	)	
R.O.A. GENERAL, INC., a Utah	)	No. 890170-CA
corporation, WILLIAM REAGAN,	)	
individually, and WILLIAM	)	Category 14(b)
ADAMS, ESQ., individually,	)	
and DOUGLAS T. HALL, ESQ.,	)	
individually,	)	
	)	
Defendants-Appellants	)	

---

APPELLANTS' REPLY BRIEF

---

On Appeal From the Judgment of the  
Third Judicial District District for  
Salt Lake County, State of Utah

Honorable James S. Sawaya, Judge

---

PHILIP R. FISHLER  
STEPHEN J. TRAYNER  
STRONG & HANNI  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
(801) 532-7080  
Attorneys for Defendant-  
Appellant Reagan

DOUGLAS T. HALL  
1775 North 900 West  
Salt Lake City, Utah 84116  
(801) 521-1775  
Attorney for Defendant-  
Appellant R.O.A.

VAL J. CHRISTENSEN  
VICTORIA E. BRIEANT  
LEBOEUF, LAMB, LEIBY & MACRAE  
136 South Main Street, Suite 1000  
Salt Lake City, Utah 84101  
(801) 355-6900  
Attorneys for Plaintiff-Respondent

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY OF ARGUMENT . . . . .	1
ARGUMENT	
<u>POINT I.</u> GENUINE ISSUES OF MATERIAL FACT EXISTED AS TO PLAINTIFF'S PERFORMANCE UNDER THE SUBJECT CONTRACT. . . . .	2
<u>POINT II.</u> THE ALLEGED ADMISSIONS CONTAINED IN R.O.A.'S FINANCIAL STATEMENTS ARE INSUFFICIENT AS A MATTER OF LAW TO SUPPORT THE ENTRY OF JUDGMENT IN FAVOR OF PLAINTIFF. . . . .	4
<u>POINT III.</u> THE TRIAL COURT ERRED IN DISREGARDING PAROL EVIDENCE THAT CREATED GENUINE ISSUES OF MATERIAL FACT . . . . .	6
CONCLUSION . . . . .	8

# TABLE OF AUTHORITIES

Page

## CASES CITED

<u>Buxton v. Diversified Resources Corp.</u> , 634 F.2d 1313 (10th Cir. 1980) . . . . .	5
<u>Colonial Leasing Co. v. Larsen Bros. Constr.</u> , 731 P.2d 483 (Utah 1986) . . . . .	6,7
<u>Controlled Receivables, Inc. v. Harmen</u> , 17 Utah 2d 420, 413 P.2d 807 (1966). . . . .	3
<u>Eie v. St. Benedict's Hospital</u> , 638 P.2d 1190 (Utah 1981). . . . .	6
<u>Lowe v. Rosenlof</u> , 12 Utah 2d 190, 364 P.2d 418 (1961). . .	2
<u>McDuffy, Edwards &amp; Associates, Inc. v.</u> <u>Peripheral Systems, Inc.</u> , 93 Or.App. 226, 762 P.2d 299, 302 (1988) . . . . .	4
<u>Sjober v. Kravik</u> , 759 P.2d 966, 969 (Mont. 1988) . . . . .	4

## OTHER AUTHORITIES CITED

Utah Rules of Civil Procedure, Rule 56 . . . . .	3
--	---

IN THE COURT OF APPEALS OF THE STATE OF UTAH

---

ROLAND WEBB,	)	
	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	
	)	
R.O.A. GENERAL, INC., a Utah	)	No. 890170-CA
corporation, WILLIAM REAGAN,	)	
individually, and WILLIAM	)	Category 14(b)
ADAMS, ESQ., individually,	)	
and DOUGLAS T. HALL, ESQ.,	)	
individually,	)	
	)	
Defendants-Appellants	)	

---

APPELLANTS' REPLY BRIEF

---

SUMMARY OF ARGUMENT

In order for plaintiff to prevail on his motion for summary judgment on defendants' alleged breach of the employment contract, plaintiff must first establish his own performance under the contract. Defendants submitted substantial evidence to the trial court demonstrating that plaintiff breached the employment contract. Once evidence of a potential breach on the part of plaintiff was introduced, the trial court should not have entered judgment in favor of plaintiff as a matter of law.

While corporate financial documents may constitute admissions against interest, such admissions are insufficient to support the entry of judgment on a contested debt. The documents relied upon by plaintiff to establish the contested debt did not take into consideration possible defenses R.O.A. might have in an

action on the alleged employment contract debt.

Furthermore, defendants submitted parol evidence which was improperly disregarded by the trial court. Substantial evidence exists that the parties' agreement did not reflect the entire understanding between the parties. In addition, evidence of the parties' conduct indicated that the employment contract was never intended to be a binding integration. As a result, the trial court erred in granting summary judgment in favor of plaintiff.

#### ARGUMENT

##### POINT I.

GENUINE ISSUES OF MATERIAL FACT EXISTED AS  
TO PLAINTIFF'S PERFORMANCE UNDER THE  
SUBJECT CONTRACT.

The Utah Supreme Court in Lowe v. Rosenlof, 12 Utah 2d 190, 364 P.2d 418 (1961), recognized that a party suing for breach of contract must first establish his own performance under the contract as a condition precedent to the entry of judgment in his favor. Plaintiff in the instant appeal simply contends that R.O.A.'s argument that he breached the parties' employment contract requirement that he devote his "best efforts, skill, and experience in connection with his employment" to R.O.A. cannot be taken seriously. While plaintiff denies any such breach, defendants submitted substantial evidence to the trial court substantiating their claims that plaintiff breached the employment contract.

The record on appeal demonstrates that plaintiff testified that he spent substantial amounts of time working on his own advertising projects while on company time. (R. 1022 at p. 18; R. 1025

at pp. 35-37). In addition, defendants submitted affidavits from others personally acquainted with plaintiff who observed plaintiff's frequent absences from the office of R.O.A., his frequent handling of only private matters during company time, and his frequent non-involvement in the day-to-day operations of R.O.A. (R. 868-69). Furthermore, the trial court had before it evidence that Webb had failed on at least two occasions to perform specific tasks required of him by a member of the board of directors of R.O.A., William K. Reagan. (R. 881-84).

While the trial court's minute entry found that "defendants' defenses based upon plaintiff's breach of the employment agreement cannot be seriously considered in the face of defendants' admissions," that is not the appropriate standard for granting summary judgment. (R. 937). Rather, the well-established standard for the granting of summary judgment under Rule 56 of the Utah Rules of Civil Procedure is that the contentions of the party opposing the motion for summary judgment must be considered in a light most advantageous to him and all doubts must be resolved in favor of permitting the matter to be submitted to the trier of fact. Controlled Receivables, Inc. v. Harmen, 17 Utah 2d 420, 413 P.2d 807 (1966). The trial court committed reversible error in apparently not "seriously considering" the existence of material factual disputes in the record. Once the trial court had evidence of plaintiff's alleged breach of contract the court erred in granting summary judgment in favor of plaintiff.

Since defendants produced evidence tending to show that



Webb breached his duties under the employment contract, the court should have also submitted the determination of the materiality of plaintiff's alleged breach to the trier of fact. Ordinarily, the determination of whether a material breach has occurred is a question of fact for the jury to determine. See Sjober v. Kravik, 759 P.2d 966, 969 (Mont. 1988); McDuffy, Edwards & Associates, Inc. v. Peripheral Systems, Inc., 93 Or.App. 226, 762 P.2d 299, 302 (1988). As a result, the actions of the trial court in granting summary judgment in favor of plaintiff must be reversed.

POINT II.

THE ALLEGED ADMISSIONS CONTAINED IN  
R.O.A.'S FINANCIAL STATEMENTS ARE  
INSUFFICIENT AS A MATTER OF LAW TO SUPPORT  
THE ENTRY OF JUDGMENT IN FAVOR OF  
PLAINTIFF.

While defendants acknowledge that a corporation's financial statements may be viewed as an admission against interest, the financial statements relied upon by plaintiff do not entitle him to a judgment as a matter of law. Plaintiff contends, and the trial court erroneously agreed, that the alleged admissions contained in R.O.A.'s financial statements and correspondence are sufficient to support the entry of judgment against R.O.A. as a matter of law. Plaintiff cites this court to several cases as support for his proposition that "the courts that have addressed similar fact situations have consistently required parties to abide by their own financial statements concerning debts owed and have found such evidence sufficient to support summary judgment." Respondent's Brief at p. 9 (emphasis added). However, none of the cited cases

establish that a financial statement by itself is sufficient to warrant the entry of summary judgment on an alleged debt. In fact, only one of the cited cases, Buxton v. Diversified Resources Corp., 634 F.2d 1313, 1319 (10th Cir. 1980), even involves a motion for summary judgment. Furthermore, the issue in Buxton was not whether the financial statement established the debt as a matter of law, but whether the financial statement amounted to an acknowledgement of the debt in order to revive the plaintiff's cause of action for a debt discharged by the statute of limitations. Defendants are unaware of any cases, and plaintiff fails to cite this court to any cases, that establish that a journal entry in a corporation's financial statement is sufficient by itself to entitle a party as a matter of law to a judgment on a contested debt.

It is important to note that the evidence plaintiff relies upon consists largely of financial statements prepared by accounting and auditing personnel. Such statements undoubtedly were prepared without reference or knowledge of any potential legal defenses that R.O.A. might have to plaintiff's claims under the employment contract. The financial statements and correspondence plaintiff relies upon are silent on the issues relating to plaintiff's alleged breach of the employment contract and the dispute between the parties regarding the very meaning of plaintiff's employment contract. While such statements may be viewed as admissions against interest as to the potential maximum exposure of the corporation to plaintiff's employment contract claim, such statements, when viewed in the context of the entire

evidence before the trial court, was insufficient to warrant the entry of judgment as a matter of law in favor of plaintiff. As a result, the actions of the trial court in granting summary judgment in favor of plaintiff on the employment contract must be reversed.

POINT III.

THE TRIAL COURT ERRED IN DISREGARDING PAROL  
EVIDENCE THAT CREATED GENUINE ISSUES OF  
MATERIAL FACT.

Defendants properly submitted parol evidence to the trial court to establish that the employment agreement was not an integrated contract. It is well established that the parol evidence rule applies only to integrated contracts. Eie v. St. Benedict's Hospital, 638 P.2d 1190, 1194 (Utah 1981). In considering the admissibility of parol evidence, the trial court must first make a preliminary or foundational determination of whether the contract is integrated. Colonial Leasing Co. v. Larsen Bros. Constr., 731 P.2d 483, 487 (Utah 1986). It should be noted that the trial court in this case made no such finding.

The evidence submitted by defendants was improperly disregarded in the court's resolution of plaintiff's motion for summary judgment. The affidavit submitted by plaintiff established that the parties understood and agreed that the employment contract compensation provisions were subject to unwritten conditions and terms. (R. 76-78, 881-84). Furthermore, the parties' undisputed course of conduct suggested that the parties did not intend the two-page employment contract to contain the entire agreement between them. Indeed, it is interesting to note that the parties

apparently on at least one occasion amended the employment agreement. (R. 51-52). As a result, the trial court had evidence that the parties never intended the employment agreement to be an integrated contract. Once a factual issue was raised as to whether the contract was intended to be a binding integration, the granting of summary judgment was improper. Colonial Leasing, 731 P.2d at 487.

The parol evidence submitted by defendants was further admissible to establish a genuine issue of material fact concerning the existence of a condition precedent. Defendants' evidence demonstrated that the parties clearly understood and agreed that R.O.A. must turn a profit and have sufficient cash available to it before a portion of the employment contract's compensation provision became effective. Such evidence goes to the very existence of the "additional compensation" provision under the parties' contract. The affidavits submitted by defendants in opposition to plaintiff's motion for summary judgment contained admissible parol evidence that created genuine issues of material fact. At a minimum, the affidavits supported the affirmative defenses of waiver and estoppel that should have been submitted to the trier of fact in order to determine whether plaintiff by his acts or conduct should have been prevented from denying the actual intent of the parties to the employment contract.

CONCLUSION

Based upon the foregoing, defendants respectfully request that the actions of the trial court in granting plaintiff's motion for summary judgment be reversed and remanded for resolution by the trier of fact.

Dated this 6<sup>th</sup> day of December, 1989.

STRONG & HANNI

By

Philip R. Fishler  
Philip R. Fishler  
Stephen J. Trayner  
Attorneys for Defendants

DOUGLAS T. HALL  
Attorney for Defendant-Appellant  
R.O.A.

CERTIFICATE OF HAND DELIVERY

I hereby certify that four true and correct copies of the foregoing Brief of Appellant was hand delivered, this 6<sup>th</sup> day of December, 1989, to the following:

Val J. Christensen  
Victoria Briant  
LeBOEUF, LAMB, LEIBY & MacRAE  
1000 Kearns Building  
136 South Main  
Salt Lake City, Utah 84101

Ross Anderson  
HANSEN & ANDERSON  
50 West 300 South, #600  
Salt Lake City, Utah 84101

Philip R. Fishler